

STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE

Meeting before the Contractor's Licensing Board

May 26th, 2009

11:00 a.m.

APPEARANCES:

MR. MICHAEL DRIVER, Esquire.
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1 MR. WHITTINGTON: I'd like to call the May
2 26th, 2009, board of licensing contractors meeting to
3 order. If I could begin with roll call, beginning
4 from my left.

5 MR. SMITH: Reese Smith, Franklin.

6 MR. TICKLE: Ronnie Tickle, Memphis.

7 MR. WHITTINGTON: Keith Whittington,
8 Johnson City.

9 MR. NEAL: Frank Neal, Nashville.

10 MR. HAYES: Jerry Hayes, Paris.

11 MR. BRODD: Mark Brodd, Knoxville.

12 MR. WHITTINGTON: First thing on the agenda
13 is -- if everyone would take a moment to review the
14 agenda -- are there any additions or deletions to the
15 agenda?

16 MS. LAZENBY: I would like to add one other
17 item for discussion, and it's legislation for
18 Senate Bill 1577. And I'm going to pass this out --
19 when we get to it, I'll pass it out and discuss it.
20 And so I would like to add that to discuss. And also
21 one other item is renewals. I'd like to discuss that
22 as well.

23 MR. WHITTINGTON: Are there any other
24 additions or deletions to the agenda?

25 MR. NEAL: I move that the agenda be

1 adopted.

2 MR. SMITH: Second.

3 MR. WHITTINGTON: I have got a motion and a
4 second. Is there any discussion?

5 (No response.)

6 MR. WHITTINGTON: All in favor, say aye.

7 BOARD MEMBERS: Aye.

8 MR. WHITTINGTON: Opposed, likewise.

9 (No response.)

10 MR. WHITTINGTON: Motion carries. The
11 first item here is hardships, under Tab 1.

12 MS. LAZENBY: We do have one -- Telise just
13 passed out a revised, and it added three more on the
14 list. So three more names to the hardship list.
15 It's the one that's behind Tab 1. And those are on
16 the website.

17 MR. NEAL: Three more, other than the ones
18 on the back page?

19 MS. LAZENBY: Yes.

20 MR. SMITH: I reviewed a couple of those.
21 I move for approval on the hardship.

22 MR. TICKLE: Second.

23 MR. WHITTINGTON: I have a motion and a
24 second to approve the hardship. Is there any
25 discussion?

1 (no response.)

2 MR. WHITTINGTON: All in favor, say aye.

3 BOARD MEMBERS: Aye.

4 MR. WHITTINGTON: Opposed, likewise.

5 (No response.)

6 MR. WHITTINGTON: Motion passed. The March
7 2009 transcript under Tab 3.

8 MS. LAZENBY: Have you all heard from the
9 court reporter? How long will it be before we get
10 it?

11 MS. CANTER: This week.

12 MR. WHITTINGTON: I would like to entertain
13 a motion that we put off review and approval of
14 the -- I guess that would be the March transcript,
15 until the next meeting.

16 MS. LAZENBY: July.

17 MR. BRODD: I'll second that.

18 MR. WHITTINGTON: We need a motion first.

19 MR. NEAL: So moved.

20 MR. WHITTINGTON: We have a motion and a
21 second. Any discussion? Does everybody understand
22 what we are doing?

23 MR. NEAL: The only discussion I'd have is,
24 we've had it every meeting. I don't know why in the
25 heck we don't get the transcripts. I mean, do we pay

1 for them?

2 MS. LAZENBY: Yes.

3 MR. NEAL: Well, why don't we stop paying
4 for them until we get them.

5 MS. CANTER: We don't pay for them until we
6 receive the invoice with the transcript.

7 MR. WHITTINGTON: Any other discussion?

8 (No response.)

9 MR. WHITTINGTON: All in favor, say aye.

10 BOARD MEMBERS: Aye.

11 MR. WHITTINGTON: Opposed, say likewise.

12 (No response.)

13 MR. WHITTINGTON: So moved. The next item
14 is interviewed and waived applicants. Are there any
15 questions about the interviewed and waived
16 applicants?

17 MR. NEAL: Mr. Chairman, I have one. I
18 suppose that this is the right time to discuss it.
19 This was an interview applicant. This is a situation
20 that involves a company out of Greenville,
21 South Carolina who has an application in for an
22 S license, low voltage. And they were fined or given
23 a citation for operating without a license for
24 \$1,000, and they paid the fine.

25 During the course of the interview --

1 which, I asked that they come in for the interview,
2 even though they were from Greenville, South
3 Carolina. This is a situation involving a
4 construction project in Dickson, Tennessee, where the
5 county attempted to build a -- as it started out, an
6 office addition, which was going to be under \$25,000.

7 When it became a job in excess of a
8 million, enough people decided that the county ought
9 not be trying to build a million dollar building
10 without a license. Long story short, there was an
11 investigation that took place. Our people went down
12 and issued a stop work order, and Ms. Lazenby has
13 been working with a number of the contractors who
14 were working down there that did not have a license.

15 But the fact is, is that their attorneys
16 and so forth kept trying to say that they could bid
17 this job; they don't need a license. Of course, we
18 all disagreed with that. They said the job has been
19 stopped for, like, four months now.

20 These people initially submitted a proposal
21 for engineering services where a license would not
22 have been required in the first place. And they
23 submitted for four particular phases, one of them --
24 all of which were under the \$25,000 limit, number
25 one. Number two, one was like \$27,000. They had no

1 idea what they were going to be awarded, but they
2 wound up awarding the entire \$95,000 to them, so
3 consequently, they were operating beyond a license.
4 Another factor involved in this is that, had there
5 been a general contractor on the job, they would not
6 have been required to have a license anyway.

7 So all that said, they're a fine company,
8 have done probably 20 million dollars worth of work
9 in the state of Tennessee where general contractors
10 were involved. And I told them today that it would
11 be my recommendation that their license be granted
12 and issued because they became a victim of
13 circumstances down there by the county alleging that
14 they were the general contractor and they didn't have
15 to have a license.

16 So that said, in view of the fact that it's
17 been four months already since they have worked on
18 the job down there, the holding of the license for
19 six months, I really don't recommend that that
20 happen. And since they have already paid their
21 \$1,000 fine, I would recommend that they be granted
22 their license, which is very minimal in that it's a
23 specialty license for pulling low voltage cabling for
24 computer hook ups and things of that nature. Any
25 questions anybody would have?

1 MR. SMITH: We'll just vote on that when we
2 consider all of the new applications.

3 MR. NEAL: Fine with me.

4 MR. WHITTINGTON: Is that part of these
5 waived interviews?

6 MR. NEAL: No. This is an interview. You
7 said waived and interviewed, didn't you?

8 MR. WHITTINGTON: Yeah. Interviewed and
9 waived. It is part of the interview list though?

10 MR. NEAL: Right. It's not on the list
11 now. I don't think it is. I mean, they just came in
12 today. Or is it already --

13 MS. LAZENBY: It's on there.

14 MR. NEAL: Okay.

15 MS. LAZENBY: There is one more that
16 Michael and Mark interviewed.

17 MR. BRODD: Woody Service Company.

18 MS. LAZENBY: Uh-huh. Do they need to
19 file?

20 MR. BRODD: No. There was a complaint
21 filed against Woody Service Company, and that
22 complaint has to be resolved. Michael and I
23 interviewed this company. They had been licensed
24 through 2003, and the main owner of this business did
25 all the fieldwork and his wife did the office

1 paperwork. And it turns out that his wife, after
2 2003, stopped filing taxes and didn't renew his
3 license with the state and basically didn't tell him
4 that she failed to do all these things.

5 He had an accounting firm that he thought
6 was doing the books; but the accounting firm wasn't
7 getting any information from the wife, so for the
8 last five years, the accounting firm hasn't been
9 involved. When he discovered all of this sometime
10 early in 2009, he got the accounting firm involved,
11 has been trying to get all his taxes up to date and
12 now wants to get his contractor's license up to date.

13 And I have -- I am going to recommend we
14 approve his license, pending resolution of the
15 complaint that has been filed against him. And his
16 license is being reduced -- or its limit is being
17 reduced from 300-and-some-odd thousand to \$150,000,
18 based on his current financial statement.

19 That's kind of his situation. He does a
20 lot of service -- HVAC service work that is less than
21 \$25,000. He did tell Michael and I that the biggest
22 job he has ever done is \$56,000. It's a small
23 operation. He's got three service technicians.
24 That's the situation on Woody Service.

25 MR. SMITH: Is that on our interview list?

1 MS. LAZENBY: Yes.

2 MR. SMITH: So we can just approve that
3 when we approve them all.

4 MR. WHITTINGTON: One thing I will point
5 out is that Industrial Electronic Services of Gray,
6 Tennessee is listed on the list twice.

7 Do I hear a motion that we approve the
8 scheduled interviewed and waived applicants?

9 MR. SMITH: So moved.

10 MR. TICKLE: Second.

11 MR. WHITTINGTON: Any discussion?

12 (No response.)

13 MR. WHITTINGTON: All in favor, say aye.

14 BOARD MEMBERS: Aye.

15 MR. WHITTINGTON: Opposed, likewise.

16 (No response.)

17 MR. WHITTINGTON: Let's move on to
18 revisions. Is there any discussion on the revisions,
19 either add class combinations, increases, mode
20 changes or name changes?

21 MR. SMITH: Move for approval.

22 MR. TICKLE: Second.

23 MR. WHITTINGTON: I've got a motion and a
24 second. Any discussion?

25 (No response.)

1 MR. WHITTINGTON: All in favor, say aye.

2 BOARD MEMBERS: Aye.

3 MR. WHITTINGTON: Opposed, likewise.

4 (No response.)

5 MR. WHITTINGTON: The next item is LLE

6 applicants. Do I hear a motion we approve?

7 MR. NEAL: So moved.

8 MR. BRODD: Second.

9 MR. WHITTINGTON: Any discussion?

10 (No response.)

11 MR. WHITTINGTON: All in favor, say aye.

12 BOARD MEMBERS: Aye.

13 MR. WHITTINGTON: Opposed, likewise.

14 (No response.)

15 MR. WHITTINGTON: Home improvement

16 applicants.

17 MS. ROBERTS: We asked for additional
18 information, and they did not turn it in, in time.

19 MR. WHITTINGTON: Okay. So I need a motion
20 that we do not approve this applicant until we
21 receive further information.

22 MR. BRODD: So moved.

23 MR. NEAL: Second.

24 MR. WHITTINGTON: We've got a motion and a
25 second. Any discussion about it?

1 (No response.)

2 MR. WHITTINGTON: All in favor, say aye.

3 BOARD MEMBERS: Aye.

4 MR. WHITTINGTON: Opposed, likewise.

5 (No response.)

6 MR. WHITTINGTON: So moved. Now we will
7 move on to the legal report, the residential
8 subcommittee recommendations. Do you want to do
9 that?

10 MR. DRIVER: I will. Residential
11 subcommittee was sent out for the home improvement
12 complaints -- well, hold on. We'll step back a
13 second. Residential subcommittee, we have changes on
14 your report to Number 6. It was changed from a
15 \$3,000 consent order to a \$5,000 consent order.
16 Number 8 was changed from a close, and flag in the
17 case that respondent renews his license to a \$5,000
18 consent order and authorized formal hearing.

19 MR. NEAL: Both?

20 MR. DRIVER: Authorize a formal hearing
21 with authorization to settle by a consent order of
22 not less than \$5,000. Yes, sir. Number 24 was
23 changed by the subcommittee to close. Number 36 was
24 changed by the subcommittee from a \$2,500 consent
25 order to a \$5,000 consent order and a letter of

1 warning informing the municipality that contracted
2 with the unlicensed entity to be diligent in the
3 future not to do so again.

4 Number 50 was changed from a \$250 consent
5 order to a \$500 consent order. Number 53 was changed
6 from a \$2,000 consent order to a \$5,000 consent
7 order. And Number 56 was changed from a \$2,000
8 consent order to a \$5,000 consent order. That
9 concludes the residential subcommittee
10 recommendations.

11 MR. WHITTINGTON: Do I hear a motion that
12 we approve the residential subcommittee report?

13 MR. SMITH: Move for approval.

14 MR. TICKLE: Second.

15 MR. WHITTINGTON: Is there any discussion?
16 (No response.)

17 MR. WHITTINGTON: All in favor, say aye.

18 BOARD MEMBERS: Aye.

19 MR. WHITTINGTON: Opposed, likewise.
20 (No response.)

21 MR. WHITTINGTON: Motion carries. Now we
22 will have the home improvement subcommittee
23 recommendations.

24 MR. DRIVER: The home improvement
25 subcommittee recommendations have been passed out to

1 you separately from the other legal report. It was
2 provided to the home improvement subcommittee. Only
3 one member responded, suggesting that the report be
4 improved in its entirety without amendment.

5 MR. WHITTINGTON: Do I have a motion?

6 MR. NEAL: So moved.

7 MR. TICKLE: Second.

8 MR. NEAL: You said improved?

9 MR. DRIVER: Approved. It may have been a
10 subconscious slip.

11 MR. WHITTINGTON: Any other discussion?

12 (No response.)

13 MR. WHITTINGTON: All in favor, say aye.

14 BOARD MEMBERS: Aye.

15 MR. WHITTINGTON: Opposed, likewise.

16 (No response.)

17 MR. WHITTINGTON: So carried. Commercial
18 subcommittee.

19 MR. DRIVER: Commercial subcommittee:
20 Number 59 was approved without change. Number 60 was
21 suggested for discussion by the full board as to
22 personal use. The situation is that the respondent
23 is a licensed residential contractor. The
24 respondent's spouse was constructing a pharmacy,
25 which is a commercial building. The spouse pulled

1 the permits. The respondent was listed as the
2 contractor on those permits. And the authorizing
3 city stated that it believed that this was within the
4 personal use exception, which is in 62-6-103(2a),
5 which you can see there.

6 There is also Rule 680-1-.22 on page 73 of
7 your law book which states the same thing. However,
8 it also states that individual use shall mean use by
9 persons other than by the general public. I said I
10 would open this to, I guess, your discussion to
11 decide if you wish to authorize a civil penalty in
12 this case.

13 MR. SMITH: What's the nature of the
14 business?

15 MR. DRIVER: It's a pharmacy.

16 MR. SMITH: A retail drugstore?

17 MR. DRIVER: That's correct.

18 MR. SMITH: And the local issuing authority
19 city didn't feel like they -- or she or he did not
20 need a license?

21 MR. DRIVER: That's correct, because the
22 local permitting authority stated that it believed
23 that this was personal use.

24 MR. SMITH: And we have a written
25 complaint?

1 MR. DRIVER: We do.

2 MR. SMITH: From a third party, right?

3 MR. DRIVER: The complaint is anonymous.

4 MR. NEAL: I can see how the local people
5 would think it's personal, since it's her personal
6 building, but it's not personal. The public can go
7 in there. I mean, it's commercial.

8 MR. SMITH: I see how though if you go
9 downtown to the guy that's going to be doing your
10 inspections and everything else and he says, you
11 don't need a permit, you go, okay; I'll do whatever
12 you say.

13 MR. NEAL: But that's why we're here.

14 MR. DRIVER: And I guess the question is,
15 since it is unequivocal in here that the local
16 permitting told them that they didn't need a license,
17 what action the board wishes to take so far as
18 penalizing the contractor.

19 MR. BRODD: The contractor didn't pull the
20 license, so he didn't actually violate anything.

21 MR. SMITH: Wait a minute now. The
22 contractor was licensed.

23 MR. DRIVER: The contractor has a
24 residential license. He does not have a commercial
25 license.

1 MR. SMITH: Okay. I missed that, I think.

2 MR. DRIVER: It says, a licensed
3 residential contractor.

4 MR. NEAL: I would think he ought to be
5 fined a \$1,000 consent order for bidding outside of
6 his licensed classification.

7 MR. SMITH: Is that a motion?

8 MR. NEAL: Yeah. \$1,000 consent order.

9 MR. DRIVER: I have no problem with that,
10 if that's what the board approves.

11 MR. TICKLE: Second.

12 MR. WHITTINGTON: I have a motion and a
13 second for a \$1,000 consent order. Any discussion?

14 (No response.)

15 MR. WHITTINGTON: All in favor, say aye.

16 BOARD MEMBERS: Aye.

17 MR. WHITTINGTON: Opposed, likewise.

18 (No response.)

19 MR. NEAL: For bidding outside of his
20 license classification?

21 MR. DRIVER: Right. And I do have two
22 cases that are not on the legal report that I'd like
23 to present now.

24 MR. WHITTINGTON: Commercial?

25 MR. DRIVER: They are both residential.

1 They were not in subcommittee, however.

2 MR. BRODD: On that last issue, I would
3 like to suggest we send a letter to this permitting
4 authority, letting him know what the requirements are
5 for personal use.

6 MR. DRIVER: And that concludes, for now,
7 the commercial report, amended to a \$1,000 civil
8 penalty and a letter to the permitting authority as
9 to the board's interpretation of personal use in this
10 case. And then, again, I will have two cases after
11 the commercial section.

12 MR. WHITTINGTON: We're through with that,
13 if you want to go back and visit those two.

14 MR. DRIVER: Okay.

15 MR. NEAL: Where was this pharmacy, out of
16 curiosity?

17 MR. DRIVER: I honestly do not have what
18 city it was in.

19 MR. NEAL: Probably in Dickson.

20 MR. SMITH: Charlotte.

21 MS. LAZENBY: I object.

22 MR. DRIVER: Was the commercial -- I know
23 that there was a motion to approve the changes to
24 Number 60. Was the commercial subcommittee's report
25 ever moved and adopted?

1 MR. WHITTINGTON: I was going to go back
2 and adopt the whole legal report as a whole, if
3 that's okay.

4 MR. DRIVER: That's fine.

5 MR. WHITTINGTON: Since we are revisiting
6 residential, let's just go back and we'll adopt the
7 thing as a whole.

8 MR. DRIVER: All right. File Number
9 2008016271 was reviewed by a board member. It
10 alleges changes made to a license. However, there's
11 very good information, and the reviewing board member
12 found it swaying, that the respondent did not have
13 actual knowledge of the change of the license that an
14 internal employee wasn't renewing timely.

15 However, since the person should have been
16 keeping up with the fact that their license was not
17 being properly renewed, it was suggested to authorize
18 a \$1,000 civil penalty for providing a fraudulent
19 license to a permitting agency, even though it
20 doesn't appear that there was any actual knowledge
21 that the license was fraudulent.

22 MR. SMITH: Was he granted a permit?

23 MR. DRIVER: In this case, no. It was
24 actually the permitting agency that brought this
25 issue to everyone's attention, this respondent's

1 included.

2 MR. WHITTINGTON: He went to obtain a
3 permit.

4 MR. DRIVER: Or to get -- actually, I
5 believe, if you'll excuse me, it was actually a local
6 license. I believe it was a local gas license. And
7 when they provided that, the state license, the
8 locality did a search and found that the license
9 wasn't current.

10 MR. TICKLE: Was he issued a permit to do
11 what he asked for?

12 MR. DRIVER: No. Not in that case.

13 MR. SMITH: I think that happens all the
14 time. When a guy goes in to pull -- well, maybe not
15 here, but if a guy goes in to pull a permit, and they
16 say, hey, your license is expired, and then turns and
17 walks away and doesn't --

18 MR. TICKLE: Because he didn't pull
19 anything, it doesn't look like he's guilty. If he
20 had pulled the permit, he would have been guilty, but
21 he didn't pull the permit. I don't think you ought
22 to fine him. I think that's just an error.

23 MR. DRIVER: Well, the license had been
24 changed from 2003 to 2008 by an internal employee and
25 hadn't been renewed for several years.

1 MR. TICKLE: Oh, in other words, it said
2 2003 and then he made a 3 to an 8?

3 MR. DRIVER: Right. Then took a state
4 license that had been changed by an internal
5 employee.

6 MR. TICKLE: That's different. I didn't
7 understand. Well, yeah, I think that's a bad deal.
8 That's fraud there.

9 MR. WHITTINGTON: What was your
10 recommendation?

11 MR. DRIVER: The recommendation of the
12 reviewing board member and mine was a \$1,000 civil
13 penalty in this case, since there doesn't appear to
14 be any actual knowledge of what was going on. And
15 the respondent has made efforts to rectify the
16 situation so far as getting their license back in
17 order.

18 MR. TICKLE: I think that fine is awful
19 light.

20 MR. SMITH: Well, the principal of the
21 company supposedly didn't know about it. One of his
22 employees had failed to renew. And when it came time
23 to get a permit, he said, uh-oh, take this up there
24 and hope he doesn't get caught.

25 MR. WHITTINGTON: Any recommendations? Any

1 motions?

2 MR. SMITH: I would accept counsel's
3 recommendation as a motion.

4 MR. NEAL: Second.

5 MR. WHITTINGTON: We'll add that onto the
6 residential subcommittee recommendations, and we'll
7 approve those all in just a minute. What's next?

8 MR. DRIVER: I have one more, File Number
9 2007057061. There were numerous workmanship
10 complaints. The stucco job on this house, from the
11 complainants, is falling off of the home, has
12 cracked. There is allegedly leaking around the
13 windows of the home.

14 The contract was entered into by one of the
15 partners of the corporation -- or in this partnership
16 in a name other than the one they were licensed. And
17 the shingles, I believe, were nailed through the
18 middle of the shingle, which is causing problems with
19 the roofing. And there were also some, what appear
20 to be code's violations on the deck, regarding
21 properly attaching joists to an elevated deck.

22 In that case, this was reviewed by a board
23 member, and it's both that board member and my
24 recommendation that a \$5,000 consent order be issued,
25 along with voluntary surrender of the license by the

1 respondent.

2 MR. NEAL: What if he doesn't do it?

3 MR. DRIVER: Then it will go to a formal
4 hearing, and the board will hear all the facts and
5 determine if any violations of law of the rule
6 occurred then.

7 MR. WHITTINGTON: So both requirements have
8 to be met or it goes to a formal, right?

9 MR. DRIVER: That's correct.

10 MR. WHITTINGTON: He's got to pay a fine
11 and surrender his license?

12 MR. DRIVER: That's correct.

13 MR. SMITH: Run that by me again. How many
14 partners are there?

15 MR. DRIVER: There are two partners.

16 MR. SMITH: And one partner didn't know
17 what his other partner was doing?

18 MR. DRIVER: Well, they both hold the
19 license. And, in fact, the person that is in many
20 ways the principal in this complaint is not the QA
21 for the corporation. You know, whether or not the
22 other partner knew what was going on or not, it's
23 hard to say. The complainants say that they never
24 heard of the QA until after they had all of these
25 workmanship problems.

1 MR. TICKLE: That's pretty tough, jerking
2 his license, if his partner messed up.

3 MR. SMITH: And we haven't heard the other
4 side of the story yet.

5 MR. TICKLE: Can we just suspend it or ask
6 him to volunteer? To pull a guy's license when your
7 partner messes up, that's tough. That's a tough
8 call.

9 MR. NEAL: Partners are jointly and
10 separately liable though.

11 MR. BRODD: What was the issue? He
12 contracted in a different name?

13 MR. DRIVER: He did contract in a name
14 other than the one they were licensed in, yes, so it
15 could arguably be acting outside of the partnership.

16 MS. LAZENBY: Can the board member that
17 reviewed the file speak about it?

18 MR. DRIVER: Well, I can say, I think, in
19 this case the partners are married individuals. And
20 I think that's what Carolyn is bringing up.

21 MR. TICKLE: Oh, they are married?

22 MR. DRIVER: They are married, the
23 partners.

24 MS. LAZENBY: Husband and wife.

25 MR. NEAL: Was Carolyn the board member?

1 MR. DRIVER: No. But I believe she thought
2 that was pertinent.

3 MS. LAZENBY: Sometimes I forget.

4 MR. DRIVER: But for whatever that's worth.
5 And, again, the complainants say -- there's no reason
6 to doubt them that they never heard of the QA until
7 the -- you know, after all these problems arose.

8 MR. SMITH: Well, we used to have informal
9 hearings.

10 MR. DRIVER: There was an informal hearing
11 scheduled. There was a conflict with the
12 complainant -- or the respondent, excuse me. The
13 complainant did come. The respondent could not come
14 today. And it was the feeling of Mr. Whittington, as
15 the reviewing member of this file, that the
16 information was sufficient to move ahead with it.

17 MR. WHITTINGTON: They had a conflict back
18 in March, too. So they were given a second chance
19 and didn't appear again today because their attorney
20 couldn't make it. And then we were given dates that
21 we could meet when the attorney could meet that was
22 not of board meeting dates.

23 And I replied with a response that they
24 either met today or we would proceed with a formal
25 hearing, because they are just, in my opinion,

1 delaying the process. This has gone on for two
2 years. So there's more to it.

3 MR. TICKLE: I withdraw my comment. I was
4 thinking of feeling sorry for somebody.

5 MR. NEAL: I move we accept your
6 recommendation.

7 MR. BRODD: I'll second that.

8 MR. WHITTINGTON: Is there anything
9 further?

10 MR. DRIVER: There's nothing further on the
11 report.

12 MR. WHITTINGTON: I would like to entertain
13 a motion that we accept the legal report,
14 residential, home improvement, and commercial
15 subcommittees as a whole. Do I hear that motion?

16 MR. TICKLE: Motion.

17 MR. BRODD: Second.

18 MR. WHITTINGTON: I have a motion and a
19 second. Is there any discussion?

20 (No response.)

21 MR. WHITTINGTON: All in favor, say aye.

22 BOARD MEMBERS: Aye.

23 MR. WHITTINGTON: Opposed, say likewise.

24 (No response.)

25 MR. WHITTINGTON: Now we get into the fun

1 part of the meeting, and that's where we all get to
2 talk more. We have got some items up for discussion,
3 the first one being a monetary limit of our license.
4 And, simply put, we're to determine exactly what is
5 included in the monetary limit: Is that the complete
6 job; is that the complete job excluding land cost or
7 including land cost; is that to include or exclude
8 profit? How does the board feel about it?

9 MR. NEAL: Is this on A/r's or on any kind?

10 MR. DRIVER: This was meant to be, I
11 believe, on all.

12 MR. NEAL: Not just A/r's?

13 MR. DRIVER: Not just A/r's.

14 MR. NEAL: Because ARs is pretty clear. So
15 you are talking about BC-A's predominantly?

16 MR. DRIVER: Right.

17 MS. LAZENBY: This is behind about Tab 7,
18 if you want to look at it.

19 MR. SMITH: Well, if we just start down the
20 list on the letter A, the contractor's limit must
21 cover the contract price and not the owner's land, I
22 think I agree with that, if you are building on a
23 site that you do not own.

24 MS. LAZENBY: That's the opinion we have
25 been using in the office.

1 MR. SMITH: That answers one part of this
2 puzzle. I think, Mr. Chairman, that's --

3 MR. WHITTINGTON: Well, I think where a lot
4 of this is coming from though is when you go to get
5 the permit. There's a question about how they're
6 going to get the permit, but I feel like that's two
7 separate questions.

8 MR. SMITH: Well, if you own the land, then
9 I think that's another question.

10 MR. WHITTINGTON: You pay for that permit.

11 MR. SMITH: But this first scenario is, you
12 are building on somebody else's land, and I think the
13 contractor can contract for up to his limit.

14 MR. NEAL: Agreed. But if he's spec
15 building his land, then the land's got to be included
16 in the contract price, the amount.

17 MR. SMITH: And we haven't been doing that.

18 MR. TICKLE: Can I speak?

19 MR. WHITTINGTON: Yeah.

20 MR. TICKLE: I did some research of areas
21 in West Tennessee, and I contacted several
22 municipalities in Tennessee. Land and profits are
23 not included when you figure -- when you are getting
24 ready to get your permit and your license
25 limitations. They do not include it in Bartlett;

1 Collierville; Jackson, Tennessee; or in Shelby
2 County. Whether you're being spec or whatever, that
3 is not figured in your license. When they ask you
4 what your license limitations are, they do not take
5 any of that into consideration.

6 MR. NEAL: I would agree with that.

7 MR. TICKLE: It's just strictly sticks and
8 bricks.

9 MR. NEAL: And I think that's fair from the
10 standpoint of the cost of pulling the permit, but I
11 don't know that that has anything to do with our
12 licensing law.

13 MR. TICKLE: Well, they interpret the
14 licensing law to mean that. If I have a \$200,000
15 license, I do not have to include any profit or land
16 in that --

17 MR. NEAL: Purchase of the permit?

18 MR. TICKLE: That's right.

19 MR. SMITH: Do they have a formula that
20 they use?

21 MR. TICKLE: Yes. They charge by the
22 square footage on that, but they will tell you right
23 quick if you are over your limit or not over your
24 limit with your license when you get ready to pull
25 your permit.

1 MR. SMITH: These permitting authorities
2 have sort of been telling you how much it's going to
3 cost, instead of you telling them.

4 MR. NEAL: That's all well and good. I
5 don't have a problem with them doing that. But when
6 a guy goes out there with that permit, and the
7 permit's for \$300,000 and he's building a \$600,000
8 house and he has got a \$500,000 license, then he's
9 violated our law. I mean, we really don't care what
10 the permitting people say.

11 MR. SMITH: That's how we have enforced it
12 in the past. We'd say, well, how much was the
13 permit, and then he was over his limit or under his
14 limit.

15 MS. LAZENBY: For those that there really
16 wasn't a contract?

17 MR. SMITH: Correct.

18 MS. LAZENBY: Just spec building.

19 MR. TICKLE: So the municipalities need to
20 know if that's how they are going to be able to
21 interpret if somebody's -- they want to help us
22 police our area, and they want to be able to save
23 customers. Say if a person is over their license or
24 not, we're saying that if you are doing spec
25 building, if you are including your price of your

1 land and your profit, then you control your overhead.

2 Number one, you don't know what your profit
3 is going to be. The second thing is, the cost of the
4 land can be anything. There's places right now in
5 Nashville and Memphis and all around where lots are
6 \$1,500,000. If you include that, a person can go
7 over his limit real quick if you have a \$500,000
8 limit.

9 MR. BRODD: Is there a question here as to
10 this answer, Carolyn?

11 MS. LAZENBY: What is the question? It's
12 been so long.

13 MR. DRIVER: I guess the crux of this, if I
14 may, is that 62-6-102 states that a contractor is
15 anyone that basically does a construction undertaking
16 for which the total cost is \$25,000 or more. And the
17 question has become, you know, in that case, what is
18 the total cost? And for persons who have a license,
19 is the land included? Is the profit included?

20 If you have a \$300,000 license, you build a
21 home that costs the contractor \$250,000; they own the
22 land; it's worth \$100,000. That's \$350,000. They
23 put -- and I am just making up numbers here -- a
24 \$100,000 markup on it, that's \$450,000. Now, what
25 was the cost of that? They owned the land. That was

1 \$100,000 of it. They put -- \$250,000 of that was not
2 the construction of that home.

3 Now, you build that house somewhere else,
4 the piece of land is \$20,000, and they only put a
5 \$20,000 markup on it, then all of a sudden it's a
6 \$290,000 house that's \$10,000 under their permit, and
7 material and labor cost of that home is the exact
8 same.

9 It has been my understanding from Carolyn,
10 and I believe from board members at past meetings,
11 that in the past what the board has said is that in
12 the case of building a spec home, the contract price
13 has been looked at, which includes the cost of the
14 land and the profit; and in the case of a custom home
15 built on another person's piece of land, the
16 permitted value of that home is what the board has
17 looked at.

18 And we are just revisiting that to make
19 sure, since the makeup of the board has, I guess,
20 changed substantially. And we have had some
21 questions raised by contractors and by attorneys
22 around town and around the state, asking for some
23 clarification on this issue, because it really is not
24 clear within the law.

25 MR. SMITH: Well, I really don't have a

1 problem, as you just stated, because if it's not the
2 cost -- if it's on the contract, the stated amount
3 that includes my lot and my profit and everything.

4 MR. NEAL: The only one that I would
5 question is, to my knowledge, other than the BC-A/r,
6 we have never included profit on anything. If you
7 build a house within your limit, \$500,000 or a
8 million five or unlimited or whatever, and you sell
9 it for -- let's say you've got a \$500,000 limit and
10 you sell it for \$650,000. I mean, that's American
11 business. I mean --

12 MR. SMITH: But when I contracted day one
13 to build this guy's house, I would have had my profit
14 in there.

15 MR. NEAL: You would have. That's true.
16 But --

17 MS. LAZENBY: But is that how it is in
18 commercial?

19 MR. BRODD: Yes.

20 MR. NEAL: If it's a spec builder, you
21 might not.

22 MR. SMITH: No. It would be on the permit.
23 And that's -- which is what we are doing now. On a
24 spec builder, the license limit is derived by the
25 permit amount, and on the contract job it's whatever

1 is stated on the contract.

2 MS. LAZENBY: And that's the ideal way.
3 It's worked for years. And I would like it to stay
4 like that. If they contract to build somebody a
5 house, that contract limit is the limit -- the
6 monetary limit they have to cover. If it's a spec
7 house, then it needs to cover the permit.

8 MR. WHITTINGTON: The contract limit being
9 their limit plus 10 percent?

10 MS. LAZENBY: They are allowed 10 percent.

11 MR. WHITTINGTON: I wanted to make sure
12 that was clear.

13 MR. NEAL: I don't see any reason for
14 changing it.

15 MR. WHITTINGTON: Me either.

16 MR. DRIVER: So just to clarify, if we can
17 have a motion to exactly what that position is, I
18 would appreciate it, because my understanding is --
19 where you are at is, on a contract job that is a
20 house that is not built spec, the contract price,
21 which includes possibly land and profit, is what the
22 board is going to look at --

23 MR. TICKLE: As your license.

24 MR. DRIVER: -- for the licensing limit.

25 MR. SMITH: That's Item Number 1.

1 MR. DRIVER: That includes land and profit,
2 everything. If it is a spec job, regardless of who
3 owns the land -- well, obviously, the contractor is
4 going to own the land. In that case, the permitting
5 price is the one that is going to control?

6 MR. TICKLE: That is correct.

7 MR. DRIVER: That's fine.

8 MR. SMITH: What if I build on your lot?

9 MS. LAZENBY: That's not a spec.

10 MR. DRIVER: The contract price is going to
11 control in that case, including all the profit and
12 everything.

13 MR. TICKLE: Your contract will dictate if
14 you are over the limit or not.

15 MS. LAZENBY: And that would be consistent
16 with the commercial jobs too.

17 MR. TICKLE: That's fine. I have no
18 problems with that.

19 MR. DRIVER: And I guess the only issue I
20 have with that is on spec homes -- and I just want to
21 raise this. On spec homes, essentially, they can
22 build the homes as big as they want, regardless of
23 profit and people building. Custom homes on other
24 people's pieces of land are having to eat their
25 profit as part of their --

1 MR. SMITH: They are at a disadvantage.

2 MR. NEAL: But you put it in.

3 MR. SMITH: And then at what point is it a
4 spec? The guy buys it after it's framed.

5 MS. LAZENBY: It's always been an issue.

6 MR. DRIVER: And I guess at some point it
7 may be best to continue to handle it on a case by
8 case basis, which is how it's been coming on the
9 board, with the understanding of what you said in the
10 clearcut cases.

11 MR. WHITTINGTON: Is that policy something
12 that needs to be brought up as a rule making?

13 MS. LAZENBY: I think so.

14 MR. DRIVER: It's possible. Yeah.

15 MS. LAZENBY: It would probably get rid of
16 a lot of e-mails, confusion.

17 MR. DRIVER: Confusion. Yeah.

18 MR. WHITTINGTON: Well, I would like to
19 hear a motion then that we go ahead and put forth the
20 rule making process to clarify the actual licensing
21 limits as the board has approved or recommended.
22 Does anyone want to make that motion?

23 MR. TICKLE: Motion.

24 MR. NEAL: Well, the motion I would make
25 would be that the board would continue to operate as

1 it has been operating as respects contracting work
2 and spec work but that the board requests a rule
3 making to make a final determination as to the exact
4 procedures to be followed in the future.

5 MR. WHITTINGTON: We've got a motion. Do I
6 hear a second?

7 MR. TICKLE: Second.

8 MR. WHITTINGTON: Any discussion?

9 MR. SMITH: Let's go ahead and vote on
10 this, and then I have got a question.

11 MR. WHITTINGTON: All in favor, say aye.

12 BOARD MEMBERS: Aye.

13 MR. WHITTINGTON: Opposed, likewise.

14 (No response.)

15 MR. WHITTINGTON: So moved.

16 MR. SMITH: Now, an anomaly of this is, I'm
17 a spec builder; I have got a \$250,000 license. I go
18 down and pull a permit for two forty-five. I go
19 build the house. I might add -- and it's cheating a
20 little, but I might add a few faucets or I might add
21 a couple of feet or whatever. I get a good profit on
22 it, and I am going to contract with somebody for
23 three fifty.

24 MR. NEAL: That's wonderful.

25 MR. SMITH: And I have got a two fifty

1 license.

2 MR. TICKLE: But you have built the house
3 already. It doesn't make any difference.

4 MR. SMITH: I understand. I just don't
5 want to get confused then. That guy is contracting
6 for a hundred more than his license.

7 MR. NEAL: He's not contracting for that.

8 MR. TICKLE: He's selling for that.

9 MR. NEAL: He's selling for that. He
10 becomes an agent in effect then.

11 MR. SMITH: But the other fellow that
12 included his lot and his profit, he can't exceed
13 that?

14 MR. NEAL: He can't do it.

15 MR. TICKLE: No. He's contracted. He's
16 got that written down. It's two different things.

17 MR. WHITTINGTON: Another thing that we
18 need to discuss is the "A little R" license, and that
19 needs to be brought up along with this. There's been
20 a couple of questions brought up to me that people
21 are trying to pull permits with a little R license in
22 excess of \$200,000. Permitting agencies around the
23 state don't understand what the little R license is,
24 and we need to help spread the word. I don't know
25 what we do.

1 MS. LAZENBY: Well, we have wrote letters.
2 We have got information on the website. But we
3 haven't written letters to the schools to tell them
4 what they can and can't do. But we do have -- we
5 have proposed some rules a few years ago for the
6 BC-A/r that we do need -- because we don't have any
7 rules at all right now. Right now, if you go to a
8 law book, a contractor, a BC-A/r is not going to
9 know. We do know that they have all come in and
10 talked with the board members, that they know. But
11 as far as anyone else, it's not in the law.

12 MR. NEAL: Everyone I interview is always
13 asking what the school did, and they always tell me
14 that they say \$70,000 is all I can do. And we used
15 to have a pink piece of paper that we gave them that
16 said \$70,000 was all they could do. They can't joint
17 venture. They can't do anything other than
18 residential. What happened to that piece of paper?

19 MR. SMITH: I had one today.

20 MR. TICKLE: Our municipalities in
21 Millington, Bartlett, Collierville, Shelby County are
22 having problems. They say that there is a problem,
23 and they don't know how to handle it.

24 Now, they can come out, and they can say,
25 you know, we know you can't do this, but they don't

1 want to go through that. They want the stuff written
2 down so when a guy or girl comes in to pull that
3 permit and it says \$70,000, and they know good and
4 well that you've got a 2,000 square foot house, and
5 you're not going to build that for \$70,000, they want
6 to be able to say, refer to such and such. That's
7 what they asked me -- all these municipalities asked
8 me to ask you all what to do.

9 MS. LAZENBY: We need to get something
10 together for them because we have had cases where I
11 know Nashville has called us and said, we have got a
12 contractor with a BC-A/r. He swears he can build
13 this for \$70,000, but according to our permit, we
14 can't. And we've told them, go with your permit; you
15 have every right to do that.

16 And -- on a few of cases -- and this does
17 happen, you know, a couple times a year. Every once
18 in a while we will have one that says, I can prove I
19 can do it. He has a contract, and the owner is
20 providing the materials. And when he has a contract,
21 that's something we'll shoot to a board member and
22 have them look at it.

23 But it is. It's like a case by case basis.
24 And I guess we need to let them know that they have a
25 right to reject it, and any time they question it,

1 they can give it to us and we'll handle it.

2 MR. TICKLE: They just like it written down
3 exactly how things are going to be so they can just
4 do it right there.

5 MR. WHITTINGTON: Can I ask a question,
6 just for my knowledge. What created the little R
7 license, what legislation or issue?

8 MS. LAZENBY: It was back in -- I'm trying
9 to think of what year it was. It was when there were
10 several counties building without a license, and it
11 was --

12 MR. SMITH: Several counties that didn't
13 have -- you didn't have to have a license to build
14 there of any type.

15 MS. LAZENBY: It was rural areas. And the
16 biggest issue was that these guys had been working
17 forever without a license. And they could build a
18 good house, but they could not read and write. They
19 could not pass a test.

20 So Representative Randy Rinks introduced
21 the bill and said, you know, if we give you all this
22 bill, will you put something together so these people
23 that can't read and write can get a license to just
24 build a small starter home? Of course, there's no
25 more starter homes. It might be even easier to do

1 away with the law.

2 MR. SMITH: I thought we had that working.

3 MS. LAZENBY: It's still there, but there's
4 nothing in the rules that says -- you know, if you
5 read the limited license law, it's real vague. It
6 just says the board will come up with a limited
7 license.

8 MR. WHITTINGTON: Wasn't there a sunset on
9 it? I thought we did a sunset on that.

10 MR. NEAL: It used to be forever. It was
11 two years and then one renewal.

12 MS. LAZENBY: No. That's the spec. You
13 all are talking about the spec license, the \$350,000
14 spec license. The A/r is a limited license. It's in
15 a separate part of the law.

16 MR. SMITH: Is it good for two years?

17 MS. LAZENBY: It's renewable each year.

18 MR. TICKLE: I thought we changed that.

19 MS. LAZENBY: No.

20 MR. TICKLE: You told somebody today it was
21 only for one year, didn't you?

22 MR. NEAL: It says very plainly that's what
23 it's for. You can have it for two years, and then
24 you can renew it for one two-year period. After
25 holding a BC-A/r license for a total for four years,

1 the contractor cannot renew the limited to one --

2 MS. LAZENBY: Oh, I didn't know that.

3 Those are your all's proposed rules that you wrote
4 two years ago.

5 MR. WHITTINGTON: We have been giving those
6 out for a long time.

7 MS. LAZENBY: I didn't know that. That's
8 how your all's rules have been proposed.

9 MR. NEAL: Well, the schools are teaching
10 that, all three of them. And all three of them said
11 they were going to try in the four-year period to get
12 to where they could get their BC-A license.

13 MS. LAZENBY: They've been renewing it for
14 two years. Right now --

15 MR. NEAL: They just got it.

16 MS. LAZENBY: I mean, when they get it,
17 it's going to be two years.

18 MR. NEAL: That's four years.

19 MS. LAZENBY: And they will keep on because
20 there's nothing right now that's --

21 MR. WHITTINGTON: Flags it?

22 MS. LAZENBY: Yeah. The last attorney's
23 opinion says you can't do that.

24 MR. NEAL: I believe you. But the schools
25 are telling them just like this piece of paper --

1 MS. LAZENBY: You know what, I think I have
2 it on the website that it's proposed rules, but we've
3 never had the rule making.

4 MR. WHITTINGTON: Why don't we just get rid
5 of the little R?

6 MS. LAZENBY: That would be the easiest.

7 MR. WHITTINGTON: What do we have to do to
8 do that?

9 MS. LAZENBY: We have to get a legislator
10 to do an amendment to the law to delete it.

11 MR. WHITTINGTON: I think that's --

12 MS. LAZENBY: That would be the easiest.

13 MR. WHITTINGTON: Is that something we need
14 to have our commissioner look into?

15 MR. SMITH: Yes.

16 MS. LAZENBY: Right.

17 MR. WHITTINGTON: Do we need to do that in
18 a formal motion?

19 MR. SMITH: Devil's advocate, why do you
20 want to do away with it, sir?

21 MR. NEAL: I think it's a good thing. It's
22 a training ground for people that get into this, you
23 know.

24 MR. WHITTINGTON: I think, from what I hear
25 though -- not to be argumentative -- it's abused

1 entirely too much. I think people are using that as
2 an easy way to get a contractor's license. Then they
3 go out. They do business. And they do business
4 under the table, behind the doors, and underneath the
5 permitting limits. And then they claim ignorance.
6 If they happen to cross over that threshold, we don't
7 really have a whole lot we can do to them.

8 MR. SMITH: I think most of them are home
9 improvement contractors.

10 MS. LAZENBY: They are. It's mainly home
11 improvement, renovation.

12 MR. SMITH: Just to stay legal. I think
13 you would have the rural areas fighting it and tech
14 schools, as they turn quite a bit of their enrollment
15 through their --

16 MS. LAZENBY: Yeah.

17 MR. NEAL: There's a large minority of
18 participation in this now also. And, as an example,
19 one I had today, the guy was getting his license. He
20 had been doing small stuff under \$25,000, but he
21 wanted to get this to step up. He had nine projects
22 that he had rehabbed, and he is now a rental
23 businessman. So it's a good starting point for
24 people. And the abuse, I think, probably comes from
25 the other side of the coin. I think these people

1 people are trying to use it legitimately.

2 MS. LAZENBY: Most of the abuse came from
3 realtors there for a while.

4 MR. NEAL: Right. They did.

5 MS. LAZENBY: That's your choices, is to
6 get that pink slip into rules, and then we can change
7 it to where you -- you know, it's like a layer deal,
8 you know, a tiered level training to keep it --

9 MR. BRODD: A training ground, four-year
10 apprenticeship or whatever.

11 MS. LAZENBY: Yeah.

12 MR. WHITTINGTON: Then they must get their
13 full BC-A license after a four-year period.

14 MS. LAZENBY: Right. And you all even had
15 a means to grandfather in if they had experience and
16 could show it. So I guess that's what we need to go
17 for, is those rules then.

18 MR. NEAL: Kind of like Keith says, we have
19 been giving those things away forever.

20 MR. SMITH: There's a lot of people that
21 think that's the law.

22 MR. BRODD: Including us.

23 MR. WHITTINGTON: Do we need to do a motion
24 on that?

25 MR. SMITH: I think we just did a motion to

1 have it go into the rule.

2 MR. WHITTINGTON: Any other discussion
3 under the monetary limits then?

4 MR. TICKLE: Let me ask a question. If it
5 goes into rules, then after four years they'll --

6 MR. WHITTINGTON: They'll have to get a
7 BC-A license.

8 MR. TICKLE: And these people that have
9 them now, they won't fall under grandfather at all;
10 they will have to go in and go forward with upping
11 their license?

12 MR. NEAL: Uh-huh. And most of them want
13 to.

14 MR. WHITTINGTON: The next item on the
15 agenda is the Bid Envelope Law. We need an opinion
16 for sub name listed for less than \$25,000.

17 MR. NEAL: If it's a mechanical or
18 electrical contractor -- I mean, I don't see where
19 there is an exception that they do not have to be
20 listed. They have to be listed.

21 MS. LAZENBY: This is the opinion the board
22 did back in 2004. I meant to have this for your
23 books.

24 (Documents passed.)

25 MS. LAZENBY: A question come up from the

1 State, and it was for a bid where the portion was
2 less than \$25,000. It was also questionable whether
3 it was HVAC. But they rejected, I guess, half of the
4 bids, because the contractor failed to list the name
5 on the outside of the envelope. But that's what they
6 are wanting to know. They are wanting to get a clear
7 consensus on how the board interprets the law on
8 portions less than \$25,000.

9 Now, they did put in their RFP that they
10 had to list the name, regardless of the amount, but
11 they said they would prefer to do what the board
12 interprets the law as.

13 MR. NEAL: That's how we interpret the law.
14 They have to list it on the outside of the envelope.
15 If they don't list it on the outside of the envelope,
16 particularly on a state -- I mean, it's on the form:
17 Electrical, mechanical.

18 MS. LAZENBY: When it's less than \$25,000.

19 MR. NEAL: It says you have to list it.

20 MR. BRODD: In the past the board has ruled
21 that if it's less than \$25,000, you don't have to
22 list.

23 MR. DRIVER: If I may, what the board has
24 ruled is if the subcontractor's part is less than
25 \$25,000. If you look, you have on that sheet what

1 62-6-119(b) says. It says, except when -- that all
2 of the subcontractors have to be listed except when
3 the bid is in an amount less than \$25,000. When the
4 bid is less than \$25,000, the name of the contractor
5 only may appear on the outside of the envelope.

6 How that reads to me is that the main bid
7 is the one that's controlling, as to whether -- and
8 this was the issue here. Is it the subcontractor's
9 bid that controls whether they have to be listed on
10 the outside of the envelope, or is it the general
11 contractor's bid that controls?

12 MR. NEAL: It's the State's law that says
13 the mechanical and electrical have to be listed on
14 the outside of the envelope.

15 MR. DRIVER: Except when the bid is less
16 than \$25,000.

17 MR. TICKLE: On this right here, Frank,
18 look.

19 MR. NEAL: Yeah. I see that. But the
20 State has always required on their bid envelope that
21 mechanical and electrical be listed. Nobody knows
22 whether it's under twenty-five.

23 MR. DRIVER: Right.

24 MR. NEAL: And if you get into the deal of
25 not listing anybody, you open it up and it's

1 forty-two and you've got an electrical in there and
2 he's only licensed for zero and he's alleging it was
3 under twenty-five. It causes a tremendous confusion
4 if you don't list them.

5 MR. DRIVER: And I'm not suggesting that
6 they not be listed. In fact, the board -- in the
7 past, the board's opinion has been just what you
8 said, which is that when the subcontractor's part is
9 less than \$25,000, they don't have to be listed. And
10 what was discussed at the meeting is that, generally,
11 the person receiving the bids isn't going to know or
12 care what the subcontractor's part of a bid is.

13 MR. NEAL: Except for mechanical and
14 electrical.

15 MR. DRIVER: If you read the law, what it
16 actually says is when the general contractor's bid is
17 over \$25,000, they have to list all of those people.
18 If the general contractor bid -- the general
19 contractor's bid is less than \$25,000, they only have
20 to list themselves.

21 Now, we have all of these other
22 requirements that state who they can contract with
23 and who has to be licensed and all that stuff and
24 they would still be violating those laws.

25 MR. NEAL: If it's under twenty-five,

1 that's fine.

2 MR. DRIVER: That's all I'm saying, is that
3 in the past, they have said it's the subcontractor's
4 bid. So, basically, what was happening is, you would
5 have a \$200,000 bid, and then they wouldn't list the
6 electrical, mechanical, HVAC people because they
7 said, well, their part is only \$20,000. Because --

8 MR. BRODD: And they don't have to be
9 licensed.

10 MR. DRIVER: Electrical they still do, and
11 plumbing. And so they were saying, well, now they
12 don't have to be listed because their part is less
13 than \$25,000. But what the law, at least to me says,
14 is that when the general contractor's bid is over
15 \$25,000, they have to list all of their
16 subcontractors. If the person doesn't have to be
17 licensed, then you have a subcontractor, you know.

18 MR. TICKLE: When we list our -- if I bid a
19 house -- if I bid a job that's \$200,000 and I'm the
20 general contractor --

21 MR. DRIVER: Yeah.

22 MR. TICKLE: So that means, right off the
23 bat, I'm over the \$25,000 limit.

24 MR. DRIVER: Right.

25 MR. TICKLE: And I have a plumber,

1 electric, and a heat and air man.

2 MR. DRIVER: Right.

3 MR. TICKLE: Do I have to list their names
4 and how much they bid on a job? In other words, do I
5 have to say ABC Plumbing bid --

6 MR. DRIVER: Just their names and license.

7 MR. TICKLE: I do not have to tell how much
8 they bid?

9 MR. DRIVER: Right. No. And I think the
10 way it was interpreted in the past, which is, whereas
11 the subcontractor's amount that controlled, it's
12 actually harder to enforce, because most people
13 receiving a bid care what you are bidding, \$200,000;
14 they don't care if your electrical guy is \$25,000 or
15 \$15,000, so long as your bid is \$200,000 and the next
16 lowest bidder is \$210,000.

17 MR. NEAL: I'm sure there has been an
18 exception to what I'm fixing to say, but I never
19 heard of a residential being bid in that fashion.

20 MR. DRIVER: Right.

21 MR. NEAL: This really applies to
22 commercial. And it applies to the State of Tennessee
23 work particularly, because their bid envelope
24 specifically says on the outside to list them.

25 MR. DRIVER: And, certainly, they can --

1 and this was something else that was brought up.

2 They can ask for whatever they want.

3 This just sets the minimum qualifications
4 for what's going to get a contractor in trouble.
5 Even if the law didn't require them to have that
6 stuff listed, they were more than free to put that on
7 the outside with their bid envelope.

8 MR. TICKLE: But let me ask you one other
9 question.

10 MR. DRIVER: Sure.

11 MR. TICKLE: If I list these people -- I'm
12 doing a state contract, and I decide that
13 ABC Plumbing is not going to be the contractor. What
14 happens to me? In other words, he has bid the job.
15 Let's just say he bid the job for \$25,000. And it
16 has taken the state three months to award me the
17 contract. And in that time I have had another bid
18 come in. Instead of \$25,000, he's at \$20,000, the
19 new bidder.

20 MR. NEAL: That's exactly why the law was
21 instigated. I don't care if it's three months or
22 three years.

23 MR. TICKLE: Well, that's what I'm asking.

24 MS. LAZENBY: So you do have to use the one
25 that's listed?

1 MR. NEAL: Yes.

2 MR. TICKLE: Okay. That's my question.
3 Regardless?

4 MR. WHITTINGTON: Unless they were to go
5 out of business, would be the only thing I could
6 think of there.

7 MR. NEAL: And the owner can say, I'm not
8 going to accept him. He's a jerk. You know, he
9 doesn't do good work. They can tell you that after
10 the fact, and then you can say, okay, where do you
11 want to go? But that's the only -- that's my
12 understanding. The only way you cannot use that guy
13 is if the owner disqualifies him.

14 MR. BRODD: But from a general contractor's
15 standpoint, if you have got a \$200,000 bid you are
16 submitting, and it's got \$1,000 worth of plumbing
17 work in it, maybe you don't have a plumbing bid.
18 From our standpoint, we would like to not have to
19 list who the plumbing contractor is for \$1,000 worth
20 of work. We are only concerned, you know, basically
21 with our bid.

22 And if the plumbing contract is over
23 \$25,000 and it requires a licensed plumbing
24 contractor, then we would want to list the plumbing
25 contractor. But if it's an insignificant amount and

1 it doesn't matter whether he is licensed or not, we
2 would prefer not to have to list him on the envelope.

3 MR. NEAL: Then you would have to list
4 yourself, if you are a BC. You can list your name
5 there.

6 MS. LAZENBY: No. He would have to do the
7 plumbing then.

8 MR. DRIVER: It's also worth noting that
9 plumbing, electrical, and HVAC -- well, plumbing and
10 electrical have separate sub \$25,000 licenses. HVAC
11 subs are required by another law. Even the subs are
12 required to be licensed.

13 MR. NEAL: Even a \$1,000 sub.

14 MR. YOUNG: May I speak?

15 MR. WHITTINGTON: Go ahead.

16 MR. YOUNG: I'm Bill Young. In this case
17 it was -- the -- the job was a State job, a plaza
18 renovation. And all that was going to be done was
19 moving a 110 foot piece of duct work off the job and
20 then reinstalling when the work was complete. And it
21 was less than \$1,000. And the problem was, they
22 couldn't get any mechanical contractors that had any
23 interest in just doing that.

24 And so in lieu of doing that, they put N/A
25 because you could -- and Mr. Brodd, I think, at one

1 time got in trouble because you put your company name
2 in that spot years and years and years ago because it
3 was less than \$25,000.

4 And that's what I tell people. If it's
5 less than \$25,000, then you just put in N/A. And
6 that's what our understanding of the law was. And
7 that was on bid day. These contractors did that.

8 Another thing that you need to question is,
9 if they were in violation -- to take this one step
10 further, an architect opened these bids. And that's
11 in violation also. If they thought it was a
12 violation of the licensing law, they should have
13 disqualified those four bidders.

14 MR. NEAL: This was a state job?

15 MR. YOUNG: State job. There were no
16 mechanical drawings. The moving of this duct work
17 was in the architectural drawings. There was
18 plumbing and electrical, but there was no mechanical.
19 They just had this piece of duct work in the
20 architectural drawings. So there was no mechanical
21 work, other than moving this duct work.

22 MR. NEAL: Did anybody list anybody?

23 MR. YOUNG: Four of the eight did.

24 MR. NEAL: Listed somebody?

25 MR. YOUNG: Uh-huh.

1 MR. NEAL: So that means that there was a
2 possibility that a contractor was out there that
3 would actually do the work. So if you just put N/A,
4 and they opened the bid, I can see why those four
5 would put a name out there and are going to raise
6 cane about that. I don't know that an N/A would be
7 responsive.

8 MR. YOUNG: I agree with that. I think the
9 same thing. If the architect thought there was any
10 possibility of violation of the law, they should not
11 open the bid. But I have been under the assumption
12 for years that the N/A was acceptable if it was less
13 than \$25,000.

14 MR. WHITTINGTON: Are you saying the
15 individual bid or the entire bid?

16 MR. YOUNG: If the total bid is over
17 \$25,000, then the general contractor has to obviously
18 put his name on it, on the envelope. But if the sub
19 bid of the plumbing, electrical, and HVAC is less
20 than twenty-five, typically the architectural doesn't
21 require that. They put N/A in that spot.

22 MR. BRODD: That's what we've been doing
23 for years, because the mechanical, electrical,
24 plumbing doesn't necessarily have to be a licensed
25 contractor.

1 MR. NEAL: On a State job?

2 MR. BRODD: Anything.

3 MR. NEAL: Well, you wouldn't have to list
4 them on any job.

5 MR. BRODD: Typically, you do. They have
6 determined even private work requires listing those
7 subs on the envelope.

8 MR. NEAL: Those mechanical and electrical
9 subs?

10 MR. BRODD: Uh-huh. Is this the way the
11 law reads now?

12 MS. LAZENBY: It's just an opinion the
13 board did in 2004. The law is behind Tab 8. I did
14 put it in behind Tab 8, and I put it in bold. And it
15 says, you know, when the bid is less than \$25,000,
16 the name of the contractor only may. And the board's
17 opinion was that since it doesn't say "shall," you
18 know, they may list it, but they don't have to.

19 And that's where the opinion come from in
20 2004. And I think we even had another opinion prior
21 to that, but that was -- I think that's the one we
22 have out there on the web.

23 But the state architect was really -- he's
24 been looking at it differently. And so when he
25 rejects the bids, he says it's because it's due to a

1 violation of our law. And I told him that the board
2 did not find that as a violation; it is their
3 opinion, based on past rulings, that it was in
4 violation of our law. That's why he wanted you all
5 to relook at it.

6 MR. WHITTINGTON: Any other questions,
7 discussions?

8 MR. NEAL: I can't argue with the fact that
9 it says "may" and it ought to say "shall." I mean,
10 if it says "may," I guess it's up to somebody to make
11 that interpretation. But the ones where the state
12 architect is involved in the past, they have required
13 that the contractor be listed, period.

14 MS. LAZENBY: Right. And he said it was
15 because --

16 MR. NEAL: And if they didn't, they would
17 just set the bid aside. Now, if you go to Memphis
18 and some of those outlying areas, they may not, I'm
19 afraid to say, whereas they do in Nashville.

20 MS. LAZENBY: So I guess what we need to
21 know is, should we tell F & A that the board still
22 does not find it a violation if they do not list
23 anything?

24 MR. DRIVER: I expressed my disagreement
25 with the past opinion.

1 MR. NEAL: How would you interpret it then?

2 MR. DRIVER: Again, if you look behind
3 Tab 8, it says, any person or entity, in preparation
4 of bid, must have those subcontractors on the outside
5 of the envelope containing the bid, except when the
6 bid is in an amount less than \$25,000.

7 And I think the most reasonable way to read
8 the bid is the general contractor's bid, not as it
9 was read before, which is each individual
10 subcontractor's bid. Because you are going to have
11 to go in and figure out, you know, what part of that
12 total bid was \$25,000. One person had an electrical
13 contractor that was \$24,000 and another had
14 twenty-seven, and so one had to list their electrical
15 sub.

16 And, again, it's worth noting LOEs and LOPs
17 have to be licensed anyway.

18 MR. BRODD: In practice, that's not how
19 it's done. The contractor's name is always on the
20 bid envelope because you are the person submitting
21 the bid.

22 MR. DRIVER: Right. And the main
23 contractor's name --

24 MR. BRODD: Or less than \$25,000, the
25 contractor's name is always on the envelope.

1 MR. DRIVER: Well, I think in this, the
2 main contractor's name is going to be on the bid
3 envelope regardless. If the total bid is less than
4 \$25,000, the name of the contractor only may appear,
5 as opposed to listing all the subs. You just have to
6 list the name of the main contractor.

7 MS. LAZENBY: And it does say in that first
8 sentence -- it does say "prime" in a bid --
9 contractors applying to bid for the prime contract.
10 And then it stops there. And then it says, and for
11 the electrical, plumbing.

12 That sort of describes the subs. And I
13 think -- maybe it's a punctuation thing. Maybe they
14 shouldn't have put a period there to show that it
15 meant that it was still part of the subs. That's
16 just my take on it.

17 MR. YOUNG: That was the intent.

18 MS. LAZENBY: That's what I thought.
19 Years ago -- I can't remember when the law even
20 passed. That's how it's been, you know, interpreted
21 for years and years.

22 MR. DRIVER: And, I mean, it is obviously
23 an upholdable position. And, like I think Mr. Neal
24 had said numerous times, the State is free to require
25 whatever they want, even if -- F & A is free to

1 continue asking for whatever information they want to
2 ask for.

3 MS. LAZENBY: They just want to know --

4 MR. NEAL: We ought to tell them in Memphis
5 how they interpret the law in Nashville then.

6 Because if we don't list them in Nashville, it's not
7 going to be open. It's just that simple. It doesn't
8 matter whether it's \$1,000 or \$24,000 or \$240,000.

9 MR. DRIVER: And, certainly, I see what
10 Mr. Brodd was saying in that, you know, if the
11 board -- you know, there is a way you can read that
12 first sentence where it reads that each individual
13 bid has to be over \$25,000.

14 So I think that presents some difficulty,
15 but I see how you could come about that reading, and
16 I think it's a culpable reading of the statute,
17 certainly. I'm not saying it's invalid in its
18 entirety, simply that my reading was different than
19 what the board had traditionally found.

20 MR. TICKLE: Well, your example is real
21 good. If somebody was \$24,000, I wouldn't have to
22 find out; but if it was \$27,000, I would. So who is
23 going to know if you are going to throw my bid out or
24 not? It would be best if everything was listed on
25 the outside, then everybody would be on the same --

1 MR. NEAL: That was the theory behind it
2 originally, to keep anybody from shopping bids and
3 just because it didn't list somebody on the outside,
4 they wound up using whoever they wanted to use.

5 MR. TICKLE: Everybody will be on the same
6 playing field if you have to list all of them.

7 MR. YOUNG: I think it needs to be
8 clarified. We need to draft a piece of legislation
9 so we can do something next year.

10 MR. NEAL: I think you ought to have to
11 list them. Your point is well taken in that it's
12 \$1,000 and, you know, who in the world is going to do
13 that? Four people found somebody that would do that
14 \$1,000 worth of work that had a license, either LLE
15 or something.

16 MR. YOUNG: Well, in this case, this was
17 really a laborer's job. You didn't really need a
18 mechanical contractor to get duct work and stick it
19 back. That's what Mark was saying; why wouldn't you
20 list it yourself? If you've got mechanical on your
21 license, that's one thing, but in this case it
22 really --

23 MR. NEAL: I thought this was electrical.
24 It was a mechanical?

25 MR. YOUNG: It's mechanical. It was a

1 piece of duct work. We were just disconnecting a
2 piece of duct work and putting it back.

3 MR. TICKLE: That's what they are saying.
4 We are dealing with mechanical, electrical, and
5 plumbing.

6 MR. YOUNG: And the mechanical and plumbing
7 were listed. The other two were over \$25,000. All
8 eight of the bidders bid the electrical and the
9 plumbing, but not the HVAC, because it was less than
10 \$25,000 and they were going to do that with their own
11 forces.

12 MR. NEAL: You would be the first to admit
13 that it does involve mechanical --

14 MR. YOUNG: Oh, yeah.

15 MR. NEAL: -- even though it's minimal? So
16 a BC, who has no mechanical license, technically
17 cannot do that. He may want to do it. He may say, I
18 can do it.

19 MR. YOUNG: It was less than -- the way
20 that we've interpreted it, if it was less than
21 \$25,000, he could to it.

22 MS. LAZENBY: Because you have got that
23 60 percent --

24 MR. TICKLE: Incidental work.

25 MR. DRIVER: I don't think in that

1 situation there's a problem. Now, the question of if
2 you can list yourself or list no one, that's a
3 different question altogether because that is not
4 something that's directly addressed here in the
5 statute at all. What you are supposed to list is --

6 MR. YOUNG: The way I interpret it is, if
7 you put -- if the general contractor puts his name in
8 there, then that's at least a violation of the intent
9 of the law, because he does not have that
10 classification on his license. But there have been
11 instances in the past where the general contractor
12 had that classification and bid it, and it really
13 upset that portion of the industry. The
14 electrical -- in this case, it was an electrical
15 contractor. The GC didn't have an E on his license.

16 MR. WHITTINGTON: So where are we?

17 MR. BRODD: My recommendation would be to
18 leave the "may" in there.

19 MS. LAZENBY: Okay. We'll keep
20 interpreting it the same.

21 MR. WHITTINGTON: We don't need to do any
22 objection on it then. The next item on the agenda is
23 the NASCLA Residential Construction Standards. I
24 will let Carolyn bring that up. I've got some
25 thoughts.

1 MS. LAZENBY: Yes. Residential board
2 members, this is something NASCLA drew up, and they
3 just wanted every state to have it, to offer it, if
4 it's something you want. They print a little book,
5 and they have had several contractors to develop the
6 standards.

7 And they based it on several states, so it
8 was more than one state contractor involved, but they
9 tried to make it generic so any state can have it,
10 adopt it, or make changes. You can even put your law
11 in, and they would print it and, just, you could call
12 it Tennessee's residential standards.

13 So that was just something they wanted to
14 offer. But most of you all may know, we have already
15 got one from the Home Builder's Association that we
16 adopted sometime back. So we do have one already
17 adopted; but just to fulfill our requirement with
18 NASCLA, I told them I would present this to you so
19 you can have it to discuss.

20 MR. SMITH: This is the little book we did
21 adopt, and we sent it out with all of our inspectors
22 years ago and were able to show it to the homeowner.
23 I guess this is still being used today.

24 MS. LAZENBY: I don't know if our
25 inspectors are using it today or not because we've

1 got --

2 MR. SMITH: Because we don't have
3 inspectors.

4 MS. LAZENBY: Yes.

5 MR. SMITH: I don't see any need to change
6 from our present policy.

7 MR. TICKLE: Our present policy and this is
8 real close. They are real close. You don't need to
9 change it.

10 MS. LAZENBY: That's fine. We don't need
11 to confuse it. That's fine.

12 MR. NEAL: Has the one that you all have
13 been using been updated in accordance with building
14 codes changes?

15 MR. WHITTINGTON: It continuously is
16 updated. In fact, it's almost changed yearly. NHP
17 puts that out, and they continually keep new versions
18 of it. And you can purchase them in bulk, which is
19 something that the state could do and hand to the
20 inspectors and get the new ones out to them.

21 We buy them for our customers, just so when
22 they start finding that little crack in the sheetrock
23 or crack in the mortar joint or concrete, that they
24 can get that book out. And if it's less than
25 whatever the parameters are, then they will know not

1 to call. It helps in a lot of cases. When we use
2 that, it answers the questions for us and it saves
3 the customer a lot of headache and worry themselves.
4 They know they are within good standings.

5 MS. LAZENBY: It's probably something I
6 need to put on the website -- I don't believe I've
7 got this on the website -- to let contractors know it
8 is out there. It might be helpful. I will work on
9 getting this on the website. I'm pretty sure there's
10 an updated one. I think I found where it is updated
11 and you can order it.

12 But I think it is a good tool. One of our
13 former legal counsel said the board did need to have
14 an adopted standard of care to help during, you know,
15 mediating complaints and having formal hearings and
16 fining for workmanship problems. She said it would
17 be real good to have.

18 MR. WHITTINGTON: Do we need to update our
19 policy or just continue on?

20 MS. LAZENBY: When was the last time we
21 voted on it? 2003?

22 MS. ROBERTS: I think in 2003 or 2004. It
23 was right around the time that the inspectors changed
24 to the different area, so you just reiterated that
25 you wanted them to continue to use that.

1 MR. WHITTINGTON: I think there's no need
2 to change it then.

3 MS. LAZENBY: Right.

4 MR. WHITTINGTON: The July board meeting,
5 dates and location.

6 MS. LAZENBY: We do need to meet in
7 West Tennessee to abide by the law. We can meet as
8 close as Natchez Trace at a state park that will not
9 be very expensive, if that's something you want to
10 do. As far as interviews are concerned, we might
11 could get some of the local board members to do the
12 interviews here in Nashville a couple of days before
13 the board meeting and then just have a business
14 meeting in West Tennessee.

15 But it's just whatever. Or we could go to
16 Memphis and pay the --

17 MR. NEAL: Is Natchez Trace in
18 West Tennessee?

19 MS. ROBERTS: It's right over the line.

20 MR. HAYES: Henderson County.

21 MR. SMITH: What side of the river is it
22 on?

23 MR. YOUNG: West side.

24 MR. NEAL: So it's on the other side. I
25 was thinking it is on this side.

1 MR. WHITTINGTON: Do we need to approve it,
2 or are you just going to do it?

3 MR. NEAL: Are we going to have applicants
4 come into Nashville though and interview them?

5 MS. LAZENBY: Yeah. Would that be all
6 right?

7 MR. NEAL: Well, it will be fine with me,
8 but I don't know how it's going to satisfy the law.
9 it looks like it ought to be reversed.

10 MS. LAZENBY: It won't ratify until the
11 full board meets.

12 MR. BRODD: I thought that's the purpose of
13 going to Memphis, so the applicants don't have to go
14 too far.

15 MR. SMITH: I understand the money side of
16 it, but that was sort of the intent, was a guy
17 wouldn't have to drive as far.

18 MR. WHITTINGTON: If they are from Memphis,
19 it's not out of the realm for them to drive up to
20 Natchez Trace and do an interview and be back by
21 lunch.

22 MR. BRODD: Right.

23 MR. WHITTINGTON: And if they are from
24 East Tennessee, we will just have to explain to them
25 that we are meeting in West Tennessee; would they

1 accept having their interview put off until
2 September.

3 MR. SMITH: So in East Tennessee are we
4 just going up to --

5 MS. LAZENBY: Well, we've already met --

6 MR. SMITH: -- Sewanee or something?

7 MS. LAZENBY: Have we fulfilled the
8 East Tennessee?

9 MR. DRIVER: We haven't met there this
10 calendar year.

11 MR. NEAL: We can go to Chattanooga to
12 fulfill East Tennessee. There used to be a guy that
13 liked to do that.

14 MS. LAZENBY: Do we go by calendar year or
15 fiscal year?

16 MR. DRIVER: Calendar year was my
17 understanding. All it says is year.

18 MR. BRODD: Once a year.

19 MR. DRIVER: I just assumed that that means
20 calendar year.

21 MS. LAZENBY: I'm sure it does. If we went
22 by fiscal year, we've already met in East Tennessee.

23 MR. DRIVER: We would also have missed
24 West Tennessee.

25 MS. LAZENBY: Oh, okay.

1 MR. NEAL: Since we are doing so many
2 waived and so few interviews now, and we can do it in
3 a day --

4 MR. BRODD: Let's just do it all at one
5 meeting.

6 MR. NEAL: Yeah.

7 MR. WHITTINGTON: Just have them come to
8 Nachez Trace.

9 MS. LAZENBY: So that location is okay, or
10 would you all rather us go --

11 MR. NEAL: Are you sure you can get that
12 facility in July?

13 MS. LAZENBY: No, we're not.

14 MS. ROBERTS: I haven't checked dates for
15 July. We checked for May.

16 MS. LAZENBY: Yeah. We were going to do it
17 in May.

18 MS. ROBERTS: That's what -- we were just
19 looking for anything in May that would cut costs.

20 MR. NEAL: July, their rates are probably
21 as high as the Peabody.

22 MS. LAZENBY: I guess we better investigate
23 a little bit more.

24 MS. ROBERTS: I think they were the same
25 throughout the summer, but I'll look.

1 MS. LAZENBY: We'll check on July, get with
2 the officers, and then we'll e-mail everybody to see
3 what we come up with.

4 MR. NEAL: There is another state park down
5 there just a little further down the road, isn't
6 there?

7 MS. LAZENBY: Is it Henry Horton?

8 MR. NEAL: No. That's here. Paris.

9 MR. HAYES: Paris Landing.

10 MR. WHITTINGTON: If you want to get on
11 down there, there's one down there in Savannah,
12 Pickwick.

13 MS. ROBERTS: Natchez Trace was the cheapest
14 one, so that's where we looked at.

15 MR. WHITTINGTON: All right. You'll take
16 care of that and let us know. The September board
17 meeting and the NASCLA annual conference.

18 MS. LAZENBY: I wanted to see if you all
19 would sort of -- I'd like for some of you, if you
20 wanted to, to attend the NASCLA annual meeting. It's
21 going to be the week of the 15th. And I thought
22 maybe, so you wouldn't have to be traveling two weeks
23 in a row, if you wanted to have the board meeting --
24 change the meeting date to one of the days during the
25 week of the 15th. That way, since you are here, you

1 might would pop by the meeting.

2 MR. NEAL: Where is the September meeting?
3 I thought it was in Knoxville.

4 MR. SMITH: We would have to go to
5 East Tennessee in November?

6 MS. LAZENBY: Yeah.

7 MR. WHITTINGTON: It won't be any different
8 than it is in September.

9 MR. NEAL: So you are saying Nashville in
10 September and November and --

11 MR. SMITH: Is that going to pull you away,
12 back and forth?

13 MS. LAZENBY: Yeah.

14 MR. WHITTINGTON: I think we need to do
15 that. Doesn't the meeting start on Tuesday?

16 MS. LAZENBY: Yes.

17 MR. WHITTINGTON: Is there not any way we
18 couldn't have our board meeting on Monday, and then
19 those that wanted to, go ahead and stay an extra
20 night?

21 MS. LAZENBY: Is that okay with everybody,
22 about changing the date?

23 MR. NEAL: You don't know what day it is?

24 MS. LAZENBY: Do you want to meet on a
25 Monday or --

1 MR. NEAL: If you meet on Monday, what date
2 is it?

3 MS. LAZENBY: September 14th.

4 MR. BRODD: Is there a certain function or
5 meeting that you would like us to be at?

6 MS. LAZENBY: I've got the agenda behind
7 Tab 10. It's just a real tentative agenda. We
8 usually have the banquet on the last day, and that's
9 usually when the other board members attend from
10 other states. And instead of having a night banquet,
11 they are looking for ways to save money and they are
12 going to have more of a luncheon. So it might be
13 good to have the meeting on a Thursday.

14 MR. WHITTINGTON: How is that going to
15 affect you and your responsibilities for being over
16 there and not being able to be here?

17 MS. LAZENBY: It will work. I'll make it
18 work. I've missed meetings before. And you won't
19 even know I'm not here. Telise does all the work
20 anyway.

21 MR. NEAL: The 17th is not a very good day,
22 because that does affect one of our members.

23 MR. SMITH: It would be nice to be at the
24 installation luncheon.

25 MS. LAZENBY: I would like for you all to

1 be there. I know a lot of you will have to travel
2 too far. Could you skip the bid letting, Frank?

3 MR. NEAL: I might could, but Jerry
4 probably couldn't.

5 MR. SMITH: That's Friday the 18th.

6 MS. LAZENBY: Yeah.

7 MR. NEAL: That's the luncheon? And you
8 are talking about meeting on Thursday?

9 MS. LAZENBY: Yeah. That way you won't
10 have to travel.

11 MR. SMITH: You could do it all in the same
12 day. Could we meet and then come to lunch?

13 MS. LAZENBY: Yeah. We could do that. If
14 you all want, we could just do it on Friday, have the
15 board meeting on Friday.

16 MR. NEAL: Interviews and everything?

17 MR. WHITTINGTON: We are 1:00 right now.

18 MR. NEAL: I was going to say, you are
19 going to be pushing it.

20 MS. ROBERTS: You will need to make sure we
21 get all of the files in plenty of time.

22 MS. LAZENBY: Do you want more time to
23 think about it?

24 MR. WHITTINGTON: I think we need to go
25 ahead and make a decision. We keep thinking about

1 it, and it will be September.

2 MR. BRODD: If we need to, we could come
3 back after the lunch and finish the meeting.

4 MR. TICKLE: That will be all right.

5 MR. WHITTINGTON: We are going to do it,
6 what, Friday the 18th?

7 MS. LAZENBY: That works.

8 MR. SMITH: This says the luncheon is at
9 1:00. It says 1:00 to 3:00. If that holds, we might
10 be able to make it.

11 MR. WHITTINGTON: We can probably be a
12 little less winded for one meeting and not have so
13 much to discuss. We can defer a few items. We can
14 probably do that.

15 MR. TICKLE: So we are going to meet on
16 September the 18th.

17 MR. WHITTINGTON: September the 18th will
18 be the next meeting.

19 MS. LAZENBY: July will be the next one.

20 MR. WHITTINGTON: Well, I'm talking about
21 for the September meeting; it will be the 18th. And
22 we'll have to move our East Tennessee meeting to
23 November. Which, that brings up a whole new issue.
24 You will have to work it around Knoxville and
25 football.

1 MR. SMITH: We've done that every year, but
2 you do have to work it around Thanksgiving.
3 Sometimes we have worked it the week after
4 Thanksgiving.

5 MR. WHITTINGTON: And we can always bring
6 it up to Johnson City. I want to do it next year up
7 there anyway.

8 MS. LAZENBY: That's right. He wants to do
9 a Johnson City meeting instead of Knoxville next
10 year.

11 MR. WHITTINGTON: Next item on the agenda
12 is Legislation Senate Bill Number 1577.

13 MS. LAZENBY: That might be of interest to
14 you all. That has been considered and --

15 MR. NEAL: Definitely of interest to us,
16 and I think we as a board should send our strongest
17 recommendation that this bill not be adopted. I
18 mean, when you let architects and engineers be
19 contractors without a license, that will do nothing
20 but cause real problems for us and --

21 MR. TICKLE: Everybody else.

22 MR. NEAL: -- everybody else.

23 MR. TICKLE: They already have plenty of
24 control.

25 MS. LAZENBY: I think the board's done that

1 before. A letter was done by the board, not by the
2 department, where you all do not support the bill. I
3 think you all did one for general liability where you
4 did not support the legislation. And I think as long
5 as it's done by the board and not the department,
6 that is something --

7 MR. WHITTINGTON: Where did this bill get
8 its legs from?

9 MR. NEAL: I hated that you brought that up
10 Carolyn because they went right on and put liability
11 insurance as a mandatory item, so our recommendation
12 goes a long way.

13 MS. LAZENBY: The first year that we sent
14 the letter, it did not pass. And then the second --
15 the first year they introduced it, it passed, and the
16 second year we did not send anything, but we did not
17 realize it was up. But they may list, since they did
18 list them before. Do you all want me to work on
19 drafting the letter from you all?

20 MR. NEAL: By all means. Send it to us and
21 let us look at it.

22 MR. TICKLE: Send one to Curry.

23 MR. YOUNG: Curry was very upset that this
24 was brought forward.

25 MR. TICKLE: He is the sponsor.

1 MR. YOUNG: He was sponsor of the bill.
2 This is an amendment that was brought. They amended
3 that house bill. This is an amendment. And I can't
4 recall the gentleman's name that introduced it. It
5 was introduced before the architects and engineers
6 last Wednesday. And they didn't see it until the
7 meeting was held. So they were very upset. The
8 sponsors were upset. You have to do this letter real
9 quick.

10 MR. SMITH: What did the original bill say?

11 MR. YOUNG: The original bill was -- it
12 said a construction management agency was a
13 professional service and therefore could not be bid
14 in the same category as architects, engineers, and
15 accountants. And then they amended that to say
16 construction management services was a professional
17 service that only applied to correctional facilities,
18 prisons.

19 And in our opinion, the AGC took the
20 position in March that we were opposed to it for
21 three reasons. One, right now, under the current
22 laws regarding school construction, you can't
23 self-perform any work on construction. That would
24 put your construction manager at risk. The second
25 thing is that we were opposed to it because they have

1 already got it in schools, now they want to make it
2 applicable to correctional facilities; what's next?

3 And then the third thing -- I'll go back to
4 what I was telling Frank -- we don't like the state
5 mandating contract wagers, and that's what this does.
6 This tells them what they can and can't do.

7 MR. WHITTINGTON: I still don't understand
8 how the amendment got in without the sponsor
9 approving it.

10 MR. TICKLE: Curry could have not accepted
11 the amendment.

12 MR. YOUNG: The committee voted on it.
13 Once the legislation brings the amendment, it has to
14 be voted on before the bill was passed. So they
15 voted -- the committee voted on the amendment and
16 passed it, and therefore it was part of the bill now.
17 I mean, anybody can bring an amendment in. The
18 committee or subcommittee one has to approve it.

19 MR. TICKLE: You need to get this out
20 quick.

21 MR. WHITTINGTON: Do you have renewals?

22 MS. LAZENBY: On renewals some of the
23 auditors are going to the extra extreme in auditing
24 personal financial statements. They are asking for
25 proof of life insurance. And, you know, that's

1 something -- they don't ask for proof of deposits or
2 cash or anything like that, but they are going after
3 the life insurance.

4 It is more work on them to do that, but I
5 think that's why the board created the one page
6 balance sheet renewal form, so they wouldn't have to
7 get notes and everything. So that's what I wanted to
8 ask. If it's okay, I will let the auditors know they
9 do not need to request proof of life insurance.

10 MR. NEAL: Were they listing cash values;
11 is that what you are talking about?

12 MS. LAZENBY: Right.

13 MR. SMITH: As soon as I agreed with you
14 this morning, I saw a renewal that had \$170,000
15 working capital and \$150,000 of it was cash valued.

16 MR. WHITTINGTON: They have already
17 attested to it.

18 MS. LAZENBY: Already signed an affidavit.

19 MR. SMITH: The guarantee agreement doesn't
20 hold much water. But if they have signed an
21 affidavit that the above is true and honest, then we
22 have got them.

23 MS. LAZENBY: How much work do you want our
24 auditors to do before you renew a contractor's
25 license? Do you want them to get --

1 MR. SMITH: Cash value is more than
2 50 percent of their working capital.

3 MR. TICKLE: They better get it audited.

4 MR. TICKLE: This one this morning, it had
5 \$172,000. And just like Reece said, \$150,000 was
6 life insurance. And to do that, he would have to
7 have several million dollars --

8 MR. SMITH: It doesn't pay to have a
9 hundred and fifty cash value.

10 MR. TICKLE: How much would it take, if he
11 got there, for \$150,000?

12 MR. NEAL: It's depending on how long he
13 had the policy. Say he is 22 years old and he's
14 saying he had that, then that wouldn't apply.

15 MR. SMITH: I would say, off the cuff, if
16 50 percent or more of his working capital was cash
17 value, then we probably ought to have some proof.
18 That's only going to come up every once in a while.

19 MR. TICKLE: It came up after you had that
20 discussion.

21 MR. WHITTINGTON: I have got one other
22 item. I'd like for everybody to make Jerry Hayes
23 from Paris, Tennessee very welcome. He is our newest
24 board member. Everybody give Jerry a hand. He has
25 got a lot ahead of him. One other item from Frank.

1 MR. NEAL: Yeah. This is just kind of an
2 information item, since we have a number of different
3 people doing waived interviews. It has been the
4 policy of the board in the past that if you are
5 looking at an applicant and he has a felony involved
6 or if he has a bankruptcy involved, it's been our
7 policy to have them come in and be interviewed and
8 not be qualified to be waived without the interview.
9 So does anybody have objections to that, to continue
10 to do the same thing we have been doing?

11 MR. TICKLE: Good idea.

12 MR. WHITTINGTON: I think the staff catches
13 most of those anyway, and they never come out to us.
14 Anything else to come before the board?

15 MR. SMITH: Just one quick thing. We don't
16 have a good means of doing this, but there are a lot
17 of contractors out there that are going out of
18 business. And we don't have a good means of policing
19 that to pull their license or monitor their license
20 or watch their license. And I think they might
21 could -- even though they filed, even though -- I
22 think they still could be pulling permits. I don't
23 have an answer to it. We just need to be aware of it
24 when we are out in the workplace.

25 MR. TICKLE: We used to publish a book that

1 listed the licenses.

2 MS. LAZENBY: The roster.

3 MR. TICKLE: I haven't got that in years.

4 MS. LAZENBY: It's online now.

5 MR. TICKLE: Okay.

6 MS. LAZENBY: It's usually updated the day
7 it's printed, you know, but the law just says the
8 board "may" print and not "shall," so that cut like a
9 \$60,000 expense.

10 MR. WHITTINGTON: Any other business from
11 this side? Seeing none, I'll entertain a motion we
12 adjourn.

13 MR. TICKLE: Motion.

14 MR. NEAL: Second.

15 MR. WHITTINGTON: I've got a motion and a
16 second. All in favor, say aye.

17 BOARD MEMBERS: Aye.

18 MR. SMITH: We are adjourned.

19 (End of proceedings, 1:10 p.m.)
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State of Tennessee)
)
 County of Davidson)

I, Brittany Temples, Court Reporter, with
 offices in Nashville, Tennessee, hereby certify that
 I reported the foregoing proceeding by machine
 shorthand to the best of my skills and abilities, and
 thereafter the same was reduced to typewritten form
 by me.

I further certify that I am not related to
 any of the parties named herein, nor their counsel,
 and have no interest, financial or otherwise, in the
 outcome of the proceedings.

Brittany Temples
 Notary Public
 State of Tennessee

My Commission Expires 5/22/2010